

## **PROTOCOLS FOR COORDINATION BETWEEN THE INDEPENDENT INVESTIGATIONS DIVISION AND STATE'S ATTORNEYS' OFFICES**

The Office of the Attorney General's Independent Investigations Division ("IID") and the Maryland State Police ("MSP") will lead the investigation of police-involved fatalities as mandated by Maryland Annotated Code, State Government Article, § 6-106.2. Under the statute, State's Attorneys retain prosecutorial authority over any crimes related to the fatality.

The IID recognizes the need to share information with the appropriate State's Attorney's Office ("SAO") regarding the investigation, as well as receive input from the SAO regarding investigative decisions. Working together during the process will eliminate delays that would otherwise occur after a report is transmitted by the IID to the SAO, avoid duplication of effort, create a better investigative product, and use investigative resources more efficiently.

### **I. Initial notifications**

Each SAO will designate a contact person for fatal incidents in their jurisdiction and provide that person's contact information to the IID. When an incident occurs, the IID will notify that designee as soon as possible. If the SAO learns of a fatal incident that has not yet been reported to the IID or MSP, the SAO will immediately provide such notification to the IID.

The SAO's designee or another member of the office is welcome to respond to the scene of an incident to observe and receive briefings. The IID will also provide a briefing on the investigation within 24 hours of the incident to the State's Attorney, or the State's Attorney's designee. Thereafter, the OAG IID will provide regular updates, to the extent permitted by law. The IID will consult with the SAO before releasing any body-worn camera footage.

### **II. The Investigation**

The goal of the IID is to provide the State's Attorneys' Offices with an investigation that answers their legal and factual questions and leaves them fully prepared to make prosecutorial decisions at the conclusion of the investigation. In order to do so, we welcome the SAOs to participate in the process in the ways detailed below. However, it is equally important that the SAOs not initiate parallel or competing investigative processes while the IID investigation is ongoing. Parallel investigations could lead to inconsistencies, generate confusion, and ultimately damage any resulting prosecution. Such a system also threatens the integrity of the independent system that the legislature has put in place.

In order to facilitate coordination, an SAO may request the opportunity to cross-designate one or more Assistant State's Attorneys to work with the IID team on the investigation. An ASA will be cross-designated upon the satisfactory completion of a conflict-of-interest questionnaire and confidentiality agreement, and will work at the direction of the IID Unit Chief for purposes of the investigation. In a case where the IID does not believe that a conflict of interest can be avoided, it may elect not to approve a cross-designation. Should the State's Attorney, IID, or cross-designated ASA desire to terminate the relationship, it may do so in writing at any time.

The statute states that IID “may act with the full powers, rights, privileges, and duties of a State’s Attorney, including the use of a grand jury in any county” Md. Code, State Gov’t § 6-106.2. The IID may ask the SAO designee for assistance with issuing subpoenas, scheduling grand-jury time, and related issues.

### III. Coordination regarding overlapping and related cases

The IID recognizes that some investigations may overlap with separate cases within the jurisdiction of the SAO. The IID will coordinate with the SAO to ensure the appropriate sharing of information, including the transfer of evidence, when appropriate, occurs in a timely manner. Where the two investigations share witnesses, the IID and SAO will coordinate with each other prior to conducting interviews and will ask their law-enforcement partners to do the same.

### IV. Final reports and prosecution

As mandated by statute, “Within 15 days after completing an investigation . . . the Independent Investigative Unit shall transmit a report containing detailed investigative findings to the State's Attorney.” Md. Code, State Gov't § 6-106.2. This report will contain the full factual findings and evidence, as well as an analysis of the relevant legal issues.

The statute requires that the IID report remain confidential through adjudication of any associated criminal case at the trial court level. The SAO should notify the IID when it has made a determination of whether to prosecute, decline, or refer the case. The IID will release the report, with appropriate redactions for confidentiality, within 30 days of a final judgment of all defendants in that case or a companion case, or within 30 days of a determination by the SAO or other relevant prosecutorial entity that they are declining to prosecute.

If an SAO determines that it has a conflict of interest in a matter and is therefore unable to assess the case for prosecution, the State’s Attorney may refer the matter to the Attorney General for potential prosecution, as provided under existing authority.

Even in cases without a conflict of interest, an SAO may seek prosecutorial assistance from the IID. If an SAO chooses to pursue a prosecution, the SAO may ask the OAG for assistance, including the cross-designation of an IID attorney or investigator to participate in prosecution, or for the IID to conduct the prosecution itself. If an SAO declines to prosecute, they may ask to refer the case to the IID for an independent determination or prosecution. In either circumstance, the OAG retains discretion as to whether to accept the referral or provide assistance.